

REMARKS

In the Office Action dated September 21, 2005, the Examiner has stated that the claims are directed to three distinct species:

Species # 1	Claims 1-8
Species # 2	Claims 9-16
Species # 3	Claims 17-20

The Examiner has required Applicants to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.

In order to be fully responsive to the Examiner's requirement for restriction, Applicants provisionally elect Species #2, claims 9-16. As Applicants have canceled claims 15-16 without prejudice, claims 9-14 correspond to the elected Species #2. However, pursuant to 37 C.F.R. §§ 1.111 and 1.143, Applicants hereby traverse the Examiner's requirement for species election.

In the first instance, the Examiner has not provided any basis for the alleged distinctness of the three identified species. It appears that the Examiner has solely relied upon the fact that there are three independent claims in the case (claims 1, 9 and 17, respectively).

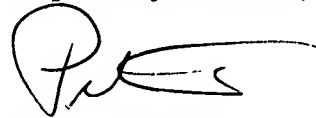
In this regard, Applicants observe that original claims 1, 9 and 17 are all directed to a gene apparatus utilizing a computer. The gene apparatus of all these three claims share the common feature of comprising DNA microarrays characterized in clause (1) of claim 1, a microscope, a temperature regulating section and imaging means as characterized in clause (2) of claim 1. The apparatus of claim 9 includes additional features relative to claim 1, and the apparatus of claim 17 includes additional features relative to claims 1 and 9.

Applicants respectfully submit that the three species, identified by the Examiner, are not patentably distinct. However, Applicants respectfully submit that a determination to make the pending requirement for species election final must evidence the patentable distinctness of the defined species, one from the other, as presented by the Examiner.

Applicants further respectfully submit that claims 9-14 have been amended and claims 15-16 have been canceled. Support for the amendment is found throughout the specification, in Figures 2, 8 and 9, and in original claims 9-16. No new matter is introduced by the foregoing amendment.

In view of the foregoing comments, it is respectfully urged that the Examiner reconsider and withdraw the requirement for species election and provide an action on the merits with respect to all the claims.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Peter I. Bernstein', with a large, stylized initial 'P' and a long horizontal stroke extending to the right.

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